

GAO

Report to the Honorable
Edolphus "Ed" Towns, Committee on
Government Reform, House of
Representatives

January 1999

U.S. DEPARTMENT OF AGRICULTURE

Problems Continue to Hinder the Timely Processing of Discrimination Complaints

19990202 009



DISTRIBUTION STATEMENT A

Approved for public release;
Distribution Unlimited

DTIC QUALITY INSPECTED 4



United States
General Accounting Office
Washington, D.C. 20548

Resources, Community, and
Economic Development Division

B-281466

January 29, 1999

The Honorable Edolphus "Ed" Towns
Committee on Government Reform
House of Representatives

Dear Mr. Towns:

Civil rights at the U.S. Department of Agriculture (USDA) has long been a troubled area. Over the years, internal and external reports have described problems in USDA's delivery of services to program beneficiaries—such as minority farmers—and in its treatment of minority employees. These studies have also cited weaknesses in the Department's overall management of its civil rights programs.

In February 1997, the Civil Rights Action Team, composed of senior USDA officials appointed by the Secretary of Agriculture, reported on its review of civil rights issues throughout the Department.¹ Among other things, the team found that (1) USDA lacked an organizational structure to support an effective civil rights program, (2) USDA's process for resolving discrimination complaints about the delivery of program benefits and services (program complaints)² was a failure, and (3) USDA's system for addressing complaints of employment discrimination (employment complaints) was untimely and unresponsive. The team made numerous recommendations to resolve these problems, one of which was to combine the Department's civil rights functions in one office that reports directly to the Assistant Secretary for Administration—USDA's top civil rights official. This was done in March 1997.

The newly consolidated Office of Civil Rights (OCR) made one of its top priorities the resolution of the Department's large backlog of program and employment complaints. OCR defines backlog complaints as complaints that were active before November 1, 1997; complaints filed with OCR on or after November 1, 1997, are considered "new" complaints. New program complaints are processed under procedures and time frames that were developed in conjunction with a recommendation in the Civil Rights Action Team's report. Employment complaints—both new and backlog cases—are to be processed under the governmentwide regulations that

¹Civil Rights at the United States Department of Agriculture: A Report by the Civil Rights Action Team, U.S. Department of Agriculture (Feb. 1997).

²A program complaint might allege, for example, that a USDA official discriminated against a farmer on the basis of race by failing to process a loan application.

govern equal employment opportunity complaints. These regulations require, among other things, that a federal agency complete an investigation of a complaint and issue an investigation report within 180 days from the date the complaint was formally filed.³

Concerned about allegations of management weaknesses and of discrimination in the Department, you asked us to (1) examine the timeliness of OCR's processing and closing of program and employment discrimination complaints and (2) identify the reasons for delays in the processes.

Results in Brief

USDA's efforts to process discrimination complaints are falling short of its goals for closing its complaint backlog—one of the Secretary's top priorities. The dates USDA established for closing its backlogs of program and employment discrimination complaints have been extended several times beyond its initial target date of July 1, 1997. As of October 1, 1998, USDA had closed only 44 percent of its 1,088 backlog program cases and 64 percent of its 2,142 backlog employment cases. Its most recent goal was to close all remaining backlog cases by December 31, 1998⁴—the fourth deadline it has set for backlog program cases and its third deadline for backlog employment cases. In addition, (1) many of USDA's new program cases are missing interim milestones and are therefore not on track for being closed in a timely manner and (2) the time spent processing its employment cases continues to far exceed federally mandated time frames. For example, on October 1, 1998, 82 percent of the 397 employment cases being investigated by USDA had already exceeded the 180-day mandated time frame for investigations.

Although USDA has provided additional resources to enhance its capabilities to address discrimination complaints, a number of problems are impeding its efforts to process complaints more expeditiously. These problems include such long-standing issues as continuing management turnover and reorganizations in the Office of Civil Rights; inadequate staff and managerial expertise; a lack of clear, up-to-date guidance and procedures; and poor working relationships and communication within the Office of Civil Rights and between the office and other USDA entities. Furthermore, the Department is not consistently using alternative dispute resolution techniques, such as mediation, to address workplace and other

³The 180-day limit may be extended another 90 days in certain instances.

⁴As of Jan. 20, 1999, USDA had not responded to our request for information on whether or not it had met its Dec. 31, 1998, goal of closing its backlog of program and employment complaint cases.

disputes before they become formal employment complaints. Federal law and regulations encourage the use of alternative dispute resolution in resolving federal workplace and other disputes.

Background

The past few years have been a period of upheaval for civil rights at USDA. During this period, an increasing number of USDA employees have filed discrimination complaints. Also, in December 1996, a group of minority farmers demonstrated in front of the White House to protest what they viewed as systemic, long-standing discrimination in the Department's agricultural lending programs. In October 1997, minority farmers filed a class action lawsuit that charged USDA with discrimination in lending and other departmental farm programs between 1983 and 1997 and failure to investigate discrimination complaints.⁵ In addition, recent legislation would enable past complainants either to bring suit or to obtain a departmental hearing on the record. This legislation waives the statute of limitations⁶ for suits alleging discrimination between 1981 and 1996 that were filed with the Department before July 1, 1997.

Concerned about allegations of discrimination, the Secretary of Agriculture, in December 1996, appointed the Civil Rights Action Team to review civil rights issues and develop recommendations to address institutional problems. The team held a dozen "listening sessions" with USDA customers and employees throughout the country before issuing its report in February 1997. The report made 92 recommendations to address four major problem areas: (1) the organizational structure of civil rights, (2) the lack of management commitment to civil rights, (3) program delivery and outreach, and (4) workforce diversity and employment practices. Shortly after the report was issued, the Secretary established a Civil Rights Implementation Team to implement the report's recommendations. Several months later, in testimony before the House Committee on Agriculture, the Secretary stated that his goal was to get

⁵Pigford v. Glickman, Civil Action No. 97-1978 (D.D.C. filed Oct. 23, 1997). On Oct. 9, 1998, the district court certified that the persons bringing the suit could represent the class of minority farmers, thereby allowing the case to continue as a class action. A multimillion-dollar settlement agreement was announced on Jan. 5, 1999. According to USDA, the district court judge presiding over the case is expected to give final approval to the agreement in March 1999. USDA's civil rights investigative unit was dismantled in 1983. After that, USDA agencies conducted preliminary inquiries of program discrimination complaints that had been filed against them. However, in May 1997, OCR assumed authority for investigating cases.

⁶The Omnibus Consolidated and Emergency Appropriations Act, 1999 (P.L. 105-277, Oct. 21, 1998, division A, sec. 101(a), title VII, section 741). The statute of limitations limits the time a plaintiff may bring an action in court against a defendant.

USDA out from under the past and have it emerge as the federal civil rights leader.

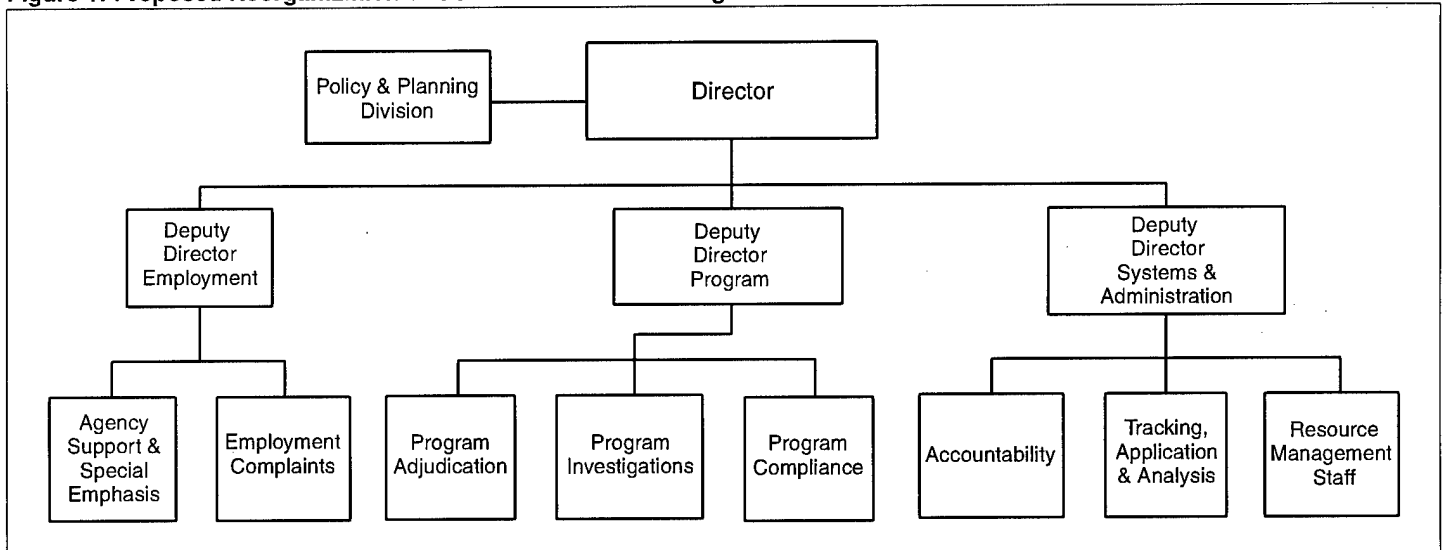
Regarding organizational issues, the action team's report noted that USDA's civil rights program had been in a persistent state of chaos because of numerous changes since the 1980s. The last reorganization prior to the team's report had occurred in October 1995, when departmental civil rights responsibilities were divided between two offices with two separate leaders—one office was responsible for employment and program discrimination complaints and one for all remaining civil rights issues, including the development of civil rights policy. In addition, most USDA agencies had their own civil rights offices that performed some complaint-processing functions. According to the report, this fragmentation of responsibilities left employees and customers (such as farmers) confused about where to go for help.

In March 1997, USDA consolidated its departmental civil rights functions under a new Office of Civil Rights (OCR). While OCR has overall responsibility for the Department's civil rights program, USDA's agencies continue to have their own civil rights offices that are responsible for ensuring agency-level compliance with civil rights laws and regulations.⁷ OCR's fiscal year 1999 budget is about \$13 million, about the same as in the previous year. As of October 1, 1998, OCR had about 120 staff. OCR is undergoing another reorganization that was expected to be effective January 15, 1999.⁸ Under this reorganization, the office will consist of nine divisions, as shown in figure 1.

⁷USDA has 12 agency civil rights offices—in some instances, several agencies in a mission area share a civil rights office. The directors of these offices report to their agency or mission area heads but receive guidance and oversight from OCR.

⁸As of Jan. 20, 1999, USDA had not responded to our request for information on whether the reorganization was effective on Jan. 15, 1999.

Figure 1: Proposed Reorganization of USDA's Office of Civil Rights



Source: USDA's Office of Civil Rights.

The reorganization will add three new divisions to the current structure—the Program Adjudication, Program Compliance, and Resource Management Staff divisions.⁹ It also creates a new position of Deputy Director for Systems and Administration, which was filled in September 1998. The Program Investigations and Adjudication Divisions will be responsible for processing program complaints; the Employment Complaints Division will continue to be responsible for processing employment complaints. While there are similarities in some of the steps followed in processing the two types of complaints (such as conducting an investigation and determining whether discrimination has occurred), the specific procedures used to process them and the laws and regulations that govern them are different.

⁹The Program Adjudication Division will review reports of investigations and draft final agency decisions on program complaints; the Program Compliance Division will conduct employment and program compliance reviews; and the Resource Management Staff Division will be responsible for such issues as contracting, budget, travel, and training. Prior to the reorganization, compliance reviews and adjudications were part of the Program Investigations Division. Several staff positions (e.g., special and confidential assistants, secretaries, and an agricultural economist) are not shown on the organizational chart.

Program Discrimination Complaints

USDA is responsible for enforcing many statutes, regulations, and executive orders that prohibit discrimination on such grounds as race, color, national origin, and age in programs or activities that it conducts (conducted programs) and in programs for which it provides federal financial assistance (assisted programs). USDA's conducted programs (such as farm loan programs) are administered directly to participants through agency offices; USDA's assisted programs are those in which nonfederal organizations (such as the states) are responsible for providing federal assistance to participants, such as those in the Food Stamp Program.¹⁰ OCR is responsible for processing complaints for both conducted and assisted programs, but the great majority of its cases arise from conducted programs. However, other than requiring that complaints generally be filed within 180 days from the date the person knew or should have known of the alleged discrimination (conducted programs) or the date of the alleged discrimination (assisted programs), USDA's codified regulations provide few specifics on the program complaint process.¹¹

On November 1, 1997, OCR began implementing a new system for processing discrimination complaints in conducted programs. For complaints accepted on or after that date, OCR requires that they be resolved (through dismissal, withdrawal, settlement, or decision) within 180 days from the date the complaint is accepted. The system also establishes interim time frames, including a requirement that the USDA agency against which the complaint was filed provide OCR, within 24 days, its perspective on the complainant's allegations.

As of October 1, 1998, OCR had 611 cases remaining in the program complaint backlog and 193 new program cases. In fiscal year 1998, OCR had about 30 staff assigned to processing new and backlog program complaints. The vast majority of program complaints come out of the programs conducted by USDA's Farm Service Agency (FSA) and Rural Housing Service. As of October 1, 1998, 65 percent and 23 percent of new open cases were related to FSA and Rural Housing Service programs, respectively, as were 61 percent and 21 percent of open backlog cases.

¹⁰According to an OCR official, most assisted program complaints concern (1) alleged violations of the Fair Housing Act (42 U.S.C. 3601-3619) filed against participants in housing-related activities, which are administered by USDA and investigated by the Department of Housing and Urban Development, or (2) allegations against USDA's Food and Nutrition Service programs, such as the Food Stamp Program.

¹¹In addition, a person who believes he or she has been discriminated against in a USDA-assisted or -conducted program may file a case in court instead of filing an administrative complaint.

Employment Discrimination Complaints

Several statutes protect federal employees against discrimination in employment—particularly title VII of the Civil Rights Act of 1964, as amended, which makes it illegal to discriminate in employment on the basis of race, color, religion, sex, or national origin.¹² Employment discrimination complaints within USDA are to be processed under the Equal Employment Opportunity Commission (EEOC) regulations that apply to executive branch employees. These regulations also establish processing time requirements for each stage of the complaint process.

Under EEOC regulations, before filing a formal complaint, employees who believe that they have been discriminated against must first contact an Equal Employment Opportunity (EEO) counselor within 45 days of the alleged discrimination to attempt to informally resolve the complaint.¹³ If this effort is unsuccessful, USDA employees can file a formal complaint with OCR, which either accepts or dismisses it. OCR may dismiss a complaint if it was improperly filed—for example, if it was not first brought to the attention of an EEO counselor or formally filed within prescribed time limits.¹⁴ If OCR accepts the complaint, it investigates and issues an investigation report. Under EEOC regulations, OCR must generally complete these activities within 180 days from the date of the complainant's formal filing.

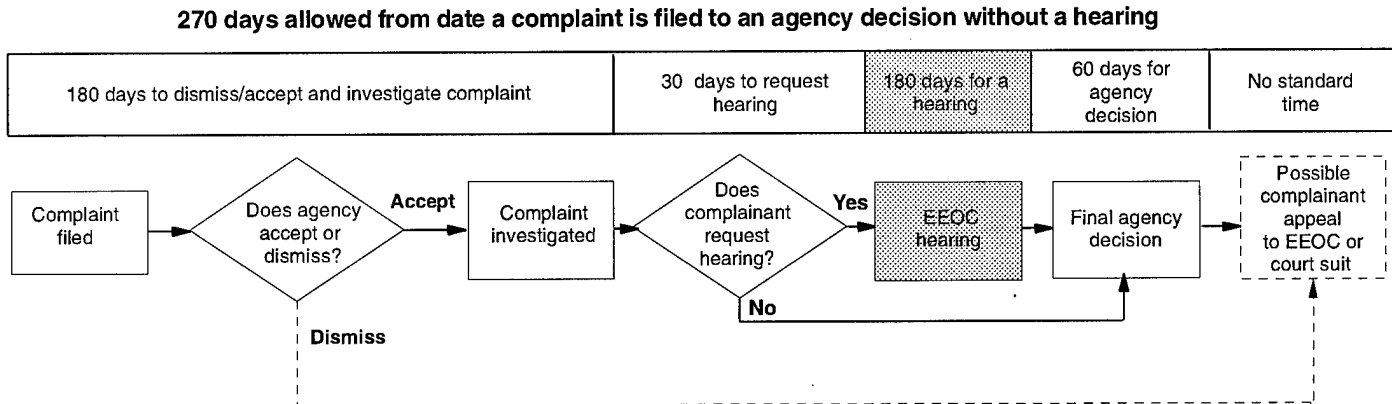
After receiving the investigation report, an employee who pursues a complaint has 30 days to either (1) request a hearing before an EEOC administrative judge, who issues a recommended decision that the agency can accept, reject, or modify in making its final decision or (2) forgo a hearing and ask for a final agency decision. When there is no EEOC hearing, regulations require that the complaint be decided within 270 days from the filing date; with an EEOC hearing, the complaint must be decided within 450 days from the filing date. An employee dissatisfied with an agency decision to dismiss a complaint or with a final agency decision may appeal to EEOC or file a civil action in a federal district court. Figure 2 shows the process and time frames for federal employment complaints as prescribed in EEOC regulations.

¹²Other statutes protect federal employees from discrimination in such areas as age and disability.

¹³In USDA, EEO counselors work in agency civil rights offices and attempt to informally resolve the employment complaint. Also, in certain instances, the 45-day limit may be extended.

¹⁴Other reasons for dismissal include the inability to locate the complainant, the complainant's failure to provide information to the agency, or the complainant's failure to accept a full settlement offer. In addition to dismissal, employment complaint cases can be closed (1) if the complainant withdraws the case, (2) through settlement, or (3) through a final agency decision on the case's merits.

Figure 2: Process and Time Frames for Federal Employment Complaints



Note: If a complainant requests an EEOC hearing, an additional 180 days are allowed for the hearing, for a total of 450 days for the entire process.

Source: GAO's analysis of 29 C.F.R. part 1614 and EEOC Management Directive 110.

While OCR has categorized its employment cases into backlog cases and new cases, all employment cases are to be processed according to EEOC regulations.

As of October 1, 1998, OCR had 761 employment complaint cases remaining in the backlog and 701 new cases, for a total of 1,462 cases in its employment complaint inventory. The largest percentage (about 21 percent) of these cases were from the Forest Service, USDA's largest agency, followed by the Animal and Plant Health Inspection Service, which accounted for 14 percent. OCR has about 30 staff members responsible for processing employment complaints. Currently, these complaints are processed along functional lines, with staff specializing in various phases of the complaint process, such as acceptance/dismissal, report of investigation, and adjudication (drafting a final agency decision).

Since the early 1990s, both the federal and private sectors have seen a dramatic increase in the number of workplace discrimination complaints and the cost and time involved in trying to resolve them. To address these complaints, private companies and federal agencies, including USDA, have turned to alternative dispute resolution (ADR) as a way of resolving

workplace problems.¹⁵ ADR includes a variety of dispute resolution techniques that usually involve intervention or facilitation by a neutral third party. Examples of ADR techniques include mediation, arbitration, and dispute resolution boards.

USDA Is Not Processing Cases in a Timely Manner

OCR is not processing discrimination complaints within its own deadlines for program complaints or within the EEOC requirements for employment complaints. OCR did not meet the original goal of resolving its backlog of program and employment complaints within 120 days after the issuance of the Civil Rights Action Team's report, and its deadline for closing the backlog of complaints has been extended several times. In addition, (1) OCR's new program cases are often missing interim milestones and are not on track for being closed in a timely manner and (2) employment cases are continuing to exceed EEOC time frames.

Substantial Backlogs Remain, and OCR Has Extended Deadlines for Closure Several Times

As of October 1, 1998, OCR had closed only 477 (or 44 percent) of its backlog of 1,088 program cases and 1,381 (or 64 percent) of its backlog of 2,142 employment cases. OCR's goal was to close all remaining backlog cases by December 31, 1998—its fourth deadline for backlog program cases and its third deadline for backlog employment cases.

The initial goal of July 1, 1997, for closing the backlog of program cases was extended first to July 1, 1998, and then to October 1, 1998. Table 1 shows the status of the backlog program cases as of July 1 and October 1, 1998. The initial date of July 1, 1997, is not included because OCR could not determine the number of cases in its program backlog until November 1, 1997.

Table 1: Status of Backlog Program Cases, July 1 and October 1, 1998

Deadline	Cases closed		Cases remaining	
	Number	Percent	Number	Percent
July 1, 1998	400	37	688	63
Oct. 1, 1998	477	44	611	56

Source: GAO's analysis of USDA's data.

¹⁵In a previous report, we noted that, overall, ADR has been more widely available within private firms than among federal agencies. See *Alternative Dispute Resolution: Employers' Experiences With ADR in the Workplace* (GAO/GGD-97-157, Aug. 12, 1997).

In September 1998, USDA's Office of Inspector General (OIG) reported that OCR had not made significant progress in reducing its backlog of program complaints nor attained the efficiency needed to systematically reduce its caseload.¹⁶ To address this impasse, the OIG recommended that the Secretary convene a complaint resolution task force (independent of OCR) to immediately assume control of the backlog.

In response, OCR established a task force, consisting of six teams, that began work on October 19, 1998, to review the backlog of open program cases¹⁷ and some closed program cases that may not have been adequately processed and reviewed. Four teams were to review about 250 backlog open cases (most of which had been investigated) to recommend resolution actions, and two were to review about 500 backlog cases that were closed administratively.¹⁸ Each team includes agency staff familiar with the agency's programs as well as OCR staff and a legal adviser from the Office of General Counsel (OGC). According to the Director of OCR, the groups' mandate was to close all backlog cases under review by December 31, 1998.

With regard to backlog employment cases, USDA's goal for closure was also December 31, 1998. As with program complaints, July 1, 1997, was the initial target date for resolving backlog employment cases. When this date was not met, a second date of July 1, 1998, was established. As of October 1, 1998, 1,381 (or 64 percent) of the 2,142 backlog employment cases, had been closed. OCR's Employment Complaints Division has been focusing its resources on processing the backlog cases in order to meet its December 31 goal.

Processing of New Program Complaints Often Falls Short of Interim Goals

As discussed, effective November 1, 1997, USDA established the goal of closing each new program complaint within 180 days as well as interim time frames for processing these complaints. At any time in the process, a complainant may withdraw or settle the complaint.

¹⁶Evaluation of the Office of Civil Rights' Efforts to Reduce the Backlog of Program Complaints (Evaluation Report No. 60801-1-Hq, Sept. 1998). This report was the OIG's fifth evaluation of USDA's effort to reduce the backlog of program complaints and to improve the complaint-processing system.

¹⁷Open cases that involve complainants who are part of the class action lawsuit were not to be reviewed by the task force.

¹⁸A case may be closed administratively if it fails to comply with legal or procedural requirements—for example, if the complainant fails to respond to OCR's request for additional information or is not a member of a protected class.

Before a complaint is accepted as a new complaint, OCR reviews it to determine its basis (such as racial discrimination) and whether it falls within OCR's jurisdiction. If more information is needed, OCR may request it from the complainant. Even though several months may be spent obtaining and reviewing information from the complainant, OCR does not count this time as part of the 180 days that it has to close new cases. OCR then accepts the complaint and determines if the case should be closed administratively or processed (if, for example, it should be investigated). Cases closed for administrative reasons are often shown in OCR's reports as having been closed on the same day they were accepted as a complaint. For example, as of October 1, 1998, 101 of the 130 new program cases OCR had closed were reported as closed on the first day of the process.

OCR's operations manual for program complaints, developed by the Civil Rights Implementation Team, includes time frames for the stages in the program complaint process, as shown in table 2.

Table 2: Stages in the Program Complaint Process and Associated Time Frames

Processing stage	Number of calendar days
OCR acknowledges complaint	3
Agency charged with discrimination responds to OCR	24
OCR conducts preliminary inquiry	6
OCR (1) closes case through dismissal ^a or referral or (2) proceeds to investigation	5
OCR investigates and drafts report	49
OCR director and OGC, if requested, review report	14
OCR director issues decision on case ^b	7

Note: Although OCR's operations manual calls for offering the complainant a mediation option at the time the complaint is acknowledged, OCR has not offered mediation, and this stage is not included in the table. In addition, it should be noted that while the manual calls for most cases to be resolved within 180 days, the cumulative number of days in the complaint process stages total less than 180 days.

^aThis stage may take up to 14 days if dismissal is under consideration to ensure a fully informed decision and adequate documentation of the reasons for dismissal.

^bWhen discrimination is found in cases involving a loan subject to the Equal Credit Opportunity Act, damages must be determined before a final decision is made. The damages determination and decision take an estimated 64 days.

Source: USDA.

Even though OCR has been using this new system for over a year, many of its cases are still in the early stages of the process—as of October 1, 1998, 44 percent were in the agency response stage. Many of these complaints have already missed the time frames established for the initial stages, with serious delays occurring in the 24-day agency response stage. (See table 3.) The Acting Assistant Secretary for Administration expressed concern that the agencies' failure to respond in a timely manner may hinder OCR's efforts to achieve its goal of processing complaints within 180 days. As of October 1, 1998, 69 cases had exceeded the 180-day goal for closing new program cases.¹⁹

Table 3: Timeliness of Agency Responses, as of October 1, 1998

Agency responses requested by OCR ^a	Agency responses received on time (within 24 days)	Agency responses received late (more than 24 days)	Agency responses overdue	Average days to receive response
186 ^b	3	69	85	91

Note : The agency responses include both open and closed cases.

^aAn agency response is to include, among other things, (1) a statement of agreement or disagreement with the allegations and an explanation for any disagreements; (2) the agency's perspective of the events that led to the filing; (3) the criteria the agency used to justify its position; and (4) additional relevant material, such as the complainant's file.

^bIn addition, 23 of the requested responses are not yet due, and 6 cases were closed without receiving the requested agency responses.

Source: GAO's analysis of USDA's data.

Although fewer cases have completed the 49-day investigation stage, delays are occurring here as well. As of October 1, 1998, the five cases that had completed this stage had spent an average of 150 days in it.

USDA is currently revising its program complaint process. According to the Director, as of November 20, 1998, departmental regulations describing the revised program have been cleared for issuance and are awaiting the Secretary's signature.²⁰ The revised program complaint process is expected to go into effect by spring 1999.

¹⁹These include cases that are still open as well as those that have been closed.

²⁰In its Jan. 20, 1999, comments on our draft report, USDA stated that it is currently revising the departmental regulation that documents the processing of complaints of discrimination. See app. II for the complete text of USDA's comments.

USDA's Record for Processing Employment Complaints Has Been Among the Worst in the Federal Government

USDA has been unable to process employment complaints within the regulatory time frames. Its record for processing complaints is particularly troublesome when compared over the years with the average processing times for the rest of the federal government. For example, in fiscal year 1991, USDA's average processing time for employment complaints was 675 days, over twice the governmentwide average of 341 days.²¹ In fiscal year 1997—the latest period for which governmentwide data are available from EEOC—USDA's average processing time was 669 days, compared with the governmentwide average of 391 days.

Similarly, in fiscal year 1997, USDA took an average of about 1,100 days, or about 3 years, to decide employment cases in which there was no EEOC hearing—over 4 times as long as the 270-day limit and over twice the governmentwide average of 529 days. Furthermore, 98 percent of USDA's investigations exceeded the 180-day EEOC standard for completing an investigation from the date the complaint was filed, compared with a governmentwide average of 76 percent of cases exceeding the standard. (See table 4.)

²¹Overall processing time is the average time it takes to close cases through dismissal, withdrawal, settlement, or final agency decision with or without an EEOC hearing.

Table 4: Time Taken by USDA to Investigate and Close Employment Complaint Cases Compared With Other Federal Agencies, Fiscal Year 1997

Agency	Number of cases in inventory at close of fiscal year	Percent of cases exceeding 180 days through investigation^a	Average days to decide a case without hearing^b
Veterans Affairs	2,749	43	574
Navy ^c	2,146	79	734
Justice	2,020	66	1,016
Army ^c	1,882	48	313
USDA	1,494	98	1,101
Treasury	1,467	45	544
Air Force ^c	1,301	63	244
Transportation	815	71	496
Health and Human Services	776	67	893
Governmentwide	34,286	76	529

Note: Comparison data are provided for the eight agencies with case inventories closest in size to USDA's (four have more cases, and four have fewer).

^aEEOC regulations stipulate that agencies take no more than 180 days to complete an investigation, including the time the agency takes to decide whether to accept or dismiss the case.

^bAgencies have 270 days to issue a final agency decision in a case without an EEOC hearing (180 days to accept/dismiss and investigate, 30 days for the complainant to decide whether to request an EEOC hearing, and 60 days for the final agency decision).

^cThe data for military agencies represent complaints by civil service employees.

Source: GAO's analysis of EEOC's data.

In addition to using EEOC's governmentwide data, we also used USDA's employment complaint data from its own database. Our analysis of USDA's open employment cases shows that most are exceeding EEOC standards for processing times. We did not distinguish between new and backlog employment cases, since they are both processed under the same EEOC-regulated system and are considered to be part of USDA's inventory of open employment cases. New and backlog employment cases are distinguishable from one another only because they were filed either before or after November 1, 1997.

Table 5 shows the number of cases in the investigation and final agency decision stages as of October 1, 1998. Of the cases that have been accepted and are being investigated, 82 percent (325 cases) had already exceeded

the 180-day limit, with 405 days being the average time that cases had been in this stage. Similarly, cases had been in the final agency decision stage²² for an average of 180 days—120 days more than the 60 days required by EEOC regulations. These are cases still pending in their respective stages—thus, the final number of days to complete the stages will be higher than that shown in table 5.

Table 5: Cases in Investigation and Final Agency Decision Stages of the Employment Complaint Process, as of October 1, 1998

Processing stage	Number of cases in stage	Average number of days cases have been in stage	Number of cases exceeding EEOC standard	Percent of cases exceeding EEOC standard	EEOC standard time frame
Investigation ^a	397	405	325	82	180
Final agency decision ^b	231	180	146	63	60

^aIncludes the time taken by OCR to accept a case and assign it to an investigator and excludes cases that are still in the acceptance/dismissal phase.

^bExcludes cases in which the final agency decision is being made after an EEOC hearing.

Source: GAO's analysis of USDA's data.

Several Factors Hinder Efforts to Improve Timeliness

Although USDA has taken a number of actions to strengthen its civil rights processes, such as providing additional resources for its program complaint process, several problems are impeding its efforts to process complaints more efficiently. First, conditions that caused delays in the past continue to undermine current efforts—continuing management turnover and reorganizations in OCR; inadequate staff and management expertise; a lack of clear, up-to-date guidance and procedures; and poor working relationships and communication within OCR and between OCR and other USDA entities. Second, USDA and its agencies are not consistently using alternative dispute resolution (ADR) techniques with a neutral third party to address workplace and other disputes. ADR has the potential to reduce the number of employment complaints, thereby lessening OCR's administrative burden and the time required to process these complaints.

Management Turnover and Reorganizations in OCR Continue to Create Instability

OCR's management turnover and reorganizations continue to be serious obstacles to improving the management of USDA's civil rights program. These problems are long-standing. Numerous reorganizations since the 1980s had left USDA's civil rights programs in a "persistent state of chaos,"

²²Excludes cases where final agency decision is being made after an EEOC hearing.

according to the Civil Rights Action Team's report, which also noted that the turnover of civil rights directors had contributed to the disarray.

Similarly, management changes in the civil rights office have been frequent: Since October 1990, the office has had eight directors; between 1991 and 1998, six individuals served as Chief of the Program Investigations Division; and since January 1993, the Employment Complaints Division has had eight chiefs.²³ Furthermore, the Department's civil rights program has been reorganized three times since 1993, resulting in numerous changes at the division and staff levels. OCR's latest reorganization was expected to be completed by mid-January 1999.

According to USDA civil rights officials and OIG reports, the instability resulting from this ongoing cycle of management turnover and reorganizations has affected the quality of OCR's work and contributed to poor morale and low productivity. For example:

- Previous civil rights directors have had many agendas and different priorities, according to the Acting Assistant Secretary for Administration. The resulting lack of consistency, she believes, is a major problem affecting the quality of OCR's work. Furthermore, the frequent changes in leadership in the Employment Complaints Division have been a major cause of the delays in processing employment discrimination complaints.
- Keeping staff motivated is difficult because of continually changing priorities, according to a former Chief of the Employment Complaints Division. In addition, a manager from that division said that management changes have created an environment in which staff are not held accountable for their work.
- The OIG's September 1998 report stated that staff who process program complaints had expressed concern about the impact of management turnover. Staff felt that the turnover resulted in a lack of consistent direction and in a changing vision of OCR's purpose.
- An EEO counselor said that OCR was unable to finalize and issue policies because of the lack of continuity resulting from ongoing reorganizations.

In addition to these problems, USDA officials said that management and staff (particularly those involved in processing program complaints) have been intermittently diverted from their day-to-day activities to respond to a court order resulting from a lawsuit brought against USDA by minority farmers. For example, the OIG reported in September 1998 that, as part of

²³These positions have been held in either a permanent or an acting capacity.

the court order, OCR staff had to collect and copy over 5 million pages of county files over a 2-week period in November 1997.

Inadequate Expertise Has Contributed to Processing Delays

Inadequate staff and management expertise continues to be a significant obstacle to improving the timely processing of discrimination complaints, according to USDA civil rights officials. The Civil Rights Action Team's report noted that USDA employees generally viewed the Department's civil rights offices as a "dumping ground" for many staff who had settled their EEO complaints. The issue of inadequate staff expertise surfaced on many occasions during our review. For example:

- A former OCR director stated that while his priority on becoming director in March 1997 had been to resolve complaints, he soon realized that the office lacked the necessary staff mix and expertise to effectively carry out its functions. He said he ultimately spent much of his time hiring new staff to build up capabilities for processing program complaints, including 14 permanent investigators, 14 temporary investigators, and a number of economists, statisticians, and computer specialists. Shortly before leaving USDA in May 1998, he told us that the processing of employment complaints was taking too long and that more training was needed to improve staff efficiency in the Employment Complaints Division.
- Several USDA officials said that low productivity was a problem in the Employment Complaints Division—they attributed this to employees not having adequate training or the right skills to function efficiently. These concerns were reiterated by a former deputy director for employment, who said that low employee productivity, low performance expectations, and inadequate training had contributed to delays in processing employment complaints.
- In September 1998, the OIG reported that staff hired in November 1997 as investigators in the Program Investigations Division were made adjudicators several months later because of bottlenecks in the adjudication process. However, these individuals were not trained in reviewing investigation reports and writing final agency decisions. Furthermore, they had virtually no knowledge of the complexities of USDA programs. As a result, OGC has had to return numerous drafts of final agency decisions prepared by the adjudicators for extensive revisions.

The OIG also reported that high-level civil rights officials lacked civil rights experience or expertise. For example, the former OCR director, appointed in March 1997, was experienced in USDA programs but lacked a strong civil rights background. Similarly, OCR's former deputy director for programs

had an advanced degree in statistics but lacked a background in civil rights.

According to the Acting Assistant Secretary, upgrading management and staff resources within OCR is her top priority. She cited inadequate staff expertise as an initial obstacle in resolving the backlog of program complaints and the lack of qualified staff as a significant contributor to delays in processing employment complaints. Furthermore, even though many new staff had recently been hired (particularly in the Program Investigations Division), many individuals still lack the skills needed for their positions. To address this issue, she and the Director of OCR have developed a list of 36 staff members (almost one-third of OCR's staff) that she described as being inappropriately placed in their current positions. These staff were identified by OCR managers or had requested transfers out of OCR. As of mid-November 1998, OCR was working with USDA's personnel office to develop procedures for placing these individuals in other positions within USDA. The Director said that all 36 positions will be refilled with qualified individuals.

While managers cited a need for additional training to build expertise, funding for training has been scarce. For example, managers in the Employment Complaints Division told us they had no budget for training and that staff had received minimal training in the past 3 years. The chief of that division gave us a detailed list of training that managers and staff felt was needed to improve their skills; however, OCR was unable to fund the training requests. Similarly, for staff in the Program Investigations Division, the OIG reported in September 1998 that training for specific job responsibilities appeared to be lacking.

The Director of OCR said that during the summer of 1998, OCR's Policy and Planning Division provided in-house training on a range of topics related to civil rights. According to the Director, however, the training was inadequate and did not thoroughly address all aspects of the process for handling discrimination complaints. She plans to hire a training coordinator to develop a comprehensive program using outside contractors.

**Clear, Up-To-Date
Guidance and Procedures
Are Lacking**

USDA does not have clear, up-to-date guidance and procedures for its program or employment complaints. Specifically, USDA has not issued departmental regulations, which establish program policy and prescribe procedures, for either type of complaint. In addition, its operations

Program Complaint Guidance and Procedures

manuals, which provide more detailed and technical guidance and instructions than do the regulations, do not accurately reflect the existing processes for program and employment complaints.

USDA has not issued departmentwide policies and procedures governing the receipt, handling, and resolution of program discrimination complaints within established time frames. In USDA, this level of guidance is typically issued as a departmental regulation. In December 1994, the OIG recommended that USDA develop a departmental regulation for the process to handle program discrimination complaints. A revision to an existing regulation on civil rights compliance reviews was drafted to incorporate the processing of program complaints, but it was never made final. In September 1998, the OIG recommended that USDA issue, within 2 months, departmental regulations governing the receipt, processing, and resolution of discrimination complaints or consider an alternate means of hastening the issuance of this guidance. USDA officials stated that they are revising the current program complaint process and that, as of November 20, 1998, departmental regulations for both conducted and assisted programs reflecting the revisions had been cleared for issuance and were awaiting the Secretary's signature.²⁴

USDA's operations manuals are intended to provide technical guidance and instructions to civil rights staff. However, OCR has no operations manual for assisted programs, and its operations manual for conducted programs does not accurately reflect the program complaint process as it has been implemented over the past year. For example, the manual says that once OCR receives a complaint, it may give the complainant up to 20 days to supply additional information that will enable it to process the complaint. If the information is not provided within that time, the manual states that OCR is to dismiss the complaint. In practice, however, OCR does not dismiss cases after 20 days if it lacks needed information. Rather, OCR often spends several months obtaining and reviewing the information and then accepts the case. As noted earlier, this time is not counted as part of the 180 days that OCR has to close new cases. In addition, although the manual states that complainants will be given the option of mediation by a neutral third party in order to resolve the complaint, USDA has not established procedures or guidance for using mediation and, as a result, does not routinely offer it. The Director of USDA's Conflict Prevention and Resolution Center has proposed conducting a pilot test for program complaint mediation; however, the proposal has not been acted upon.

²⁴In commenting on our draft report, USDA stated that it is currently revising the departmental regulation that documents the processing of discrimination complaints. See app. II for the complete text of USDA's comments.

Employment Complaint Guidance and Procedures

The Director of OCR said that once departmental regulations are issued for the revised program complaint process, the office would revise the operations manual to reflect the new process. However, she could not provide a target date for the issuance of a revised manual.

USDA's process for handling employment discrimination complaints is governed by EEOC regulations. However, USDA lacks departmental regulations to implement the EEOC regulations. USDA's Associate General Counsel for Civil Rights stated that USDA guidance relating to the EEOC regulations had lapsed in 1994 and that several attempts to revise and update the Department's regulations were started but never completed. The Director of OCR said that, as of November 20, 1998, revised employment complaint regulations had been cleared for issuance and were awaiting the Secretary's signature.²⁵ These regulations will establish departmental procedures for handling employment complaints that are consistent with current practices and incorporate additional prohibited conduct, such as discrimination on the basis of sexual orientation.²⁶

Furthermore, the Employment Complaints Division's draft operations manual was developed in 1996, before the civil rights functions were reorganized. Thus, parts of the manual do not reflect recent organizational and staff changes. For example, USDA's regional service centers²⁷ and the dispute resolution boards, both cited in the draft operations manual, no longer exist. In addition, staff responsibilities for the various phases of the employment complaint process have changed, invalidating many of the manual's standard operating procedures. According to the Director of OCR, there are no immediate plans to update the operations manual.

An EEOC official told us that federal agencies should have an operations manual to (1) facilitate compliance with EEOC regulations, (2) standardize processes throughout the agency, and (3) ameliorate the impact of management and staff turnover. A civil rights official in the Department of Transportation told us that her office was able to minimize the impact of management and staff turnover by standardizing its work processes, which are documented in a comprehensive operations procedures manual.

²⁵As of Jan. 20, 1999, USDA had not responded to our request for information on whether the departmental regulations had been issued.

²⁶Discrimination on the basis of sexual orientation is not prohibited under EEOC regulations.

²⁷The centers housed the EEO counselors, who are now located in the agencies' civil rights offices.

Inadequate Working Relationships and Communication Complicate Efforts to Process Complaints

Effective collaboration and communication are important since both the program and employment complaint processes require the active involvement of both the USDA agencies and OGC. However, difficulties in establishing effective working relationships and communication between OCR and some USDA agencies, between OCR and OGC, and within OCR have hindered efforts to process complaints more efficiently. The Acting Assistant Secretary for Administration said that OCR is working to improve its relations with other USDA organizations. She noted that the rebuilding of relationships was necessary to enhance OCR's effectiveness and the quality of its work. Problems in working relationships and communication are described below.

Relationships and Communication With USDA Agencies

OCR's implementation of the program complaint process is hindered by agencies' disagreement about their role in the program complaint process and by inadequate OCR guidance. For example, civil rights officials representing FSA and the Rural Housing Service—the two agencies with the most program complaints—believe that the requirement to provide the agency's response within 24 days is unrealistic. OCR officials, however, maintain that 24 days is adequate for the limited response that they expect from the agencies. OCR's guidance on the agencies' role in the process was issued nearly 2 months after the process took effect, and USDA has not issued departmental regulations on the program complaint process.

In addition, agency civil rights officials pointed out that OCR has not adequately consulted and communicated with their offices, particularly during the development of policies and procedures. For example, according to the civil rights director for one agency, to improve civil rights management at USDA, communication between OCR and the agencies should be strengthened and made more systematic. Similarly, four of the eight EEO counselors we interviewed said that improved communication with OCR would enable them to better assist staff who had filed discrimination complaints. Employees who file a formal complaint with OCR often contact the counselor they dealt with during the informal complaint stage for information on the status of their case. The counselors said they have had difficulties in obtaining this information from OCR.

Relationships and Communication With OGC

OCR continues to experience difficulties in developing effective working relationships with OGC, which has established a civil rights division headed by an associate general counsel. These difficulties contribute to inefficiencies in processing program complaints. For example, in an April 1998 memo, OCR's Deputy Director for Programs stated that delays in OGC's review of draft final agency decisions had created bottlenecks that

hindered the closing of backlog complaints. However, OGC officials said that their reviews have taken longer than anticipated because many draft decisions needed extensive revisions; they estimated that 50 to 90 percent were returned to OCR to be rewritten. The Associate General Counsel for Civil Rights said that improved collaboration between his office and OCR at key points in the program complaint process was needed to improve the timeliness of OCR's handling of complaints.

Regarding employment complaints, a Forest Service civil rights official said that OGC should be more involved in preparing final agency decisions. She also said that having a civil rights attorney dedicated to employment issues and readily available to respond to questions from the agency's EEO counselors and from OCR staff would be very useful. The Associate General Counsel said that although his office had initially focused on program complaints, it planned to become increasingly involved with employment complaints. At an August 1998 OCR staff meeting, the Acting Assistant Secretary for Administration acknowledged that OCR's relations with OGC had been strained and reported that officials from these organizations recently met to begin to address their differences.

Relationships and Communication Within OCR

Inadequate communication within OCR has contributed to low morale and productivity within the office. For example, according to a 1998 OIG report, many employees in the Program Investigations Division said they were never consulted when decisions were made, and that a lack of consultation resulted in the establishment of timetables that they viewed as unreasonable and unattainable. Lack of communication can be a problem even at the management level. At an August 1998 staff meeting, the Acting Assistant Secretary for administration highlighted the importance of communication and cooperation within OCR. Nonetheless, communication within OCR remains a problem. For example, the OCR reorganization, which was expected to become effective on January 15, 1999, created a new management position that was filled in early September 1998. However, as of October 1, 1998, the individual who filled this position still did not know the full extent of his duties and responsibilities.

USDA's Use of ADR in Addressing Workplace and Other Disputes Has Been Sporadic

USDA is not consistently using ADR techniques to address workplace and other disputes. Furthermore, USDA has not used ADR in addressing program complaints, even though its use is called for in OCR's operations manual.

ADR uses a variety of dispute resolution techniques that usually involve intervention or facilitation by a neutral third party. These techniques range from more formal approaches—such as management review boards and arbitration, when a neutral party typically rules on the merits of the disputants' positions and imposes a solution—to less formal techniques—such as mediation, when a neutral third party helps craft a solution to the dispute. When used early in a dispute, before positions solidify, mediation can resolve workplace disputes before they become formal complaints, thus helping to reduce complaint-processing workloads. For example, a 1996 EEOC study concluded that a sizable number of federal employment discrimination complaints may not involve discrimination issues at all but basic communication problems for which mediation may be appropriate.²⁸

Recent laws and regulations have supported the use of ADR in resolving federal workplace disputes. For example, the Administrative Dispute Resolution Act of 1990 gave federal agencies the authority to use ADR to supplement existing methods of resolving disputes. The act required federal agencies to develop policies for using ADR while providing maximum agency flexibility on whether and how ADR should be used. The act's coverage was broadened with the passage of the 1996 Alternative Dispute Resolution Act. In 1992, EEOC added provisions to its employment complaint regulations encouraging the use of ADR in all stages of the complaint process. And, in February 1998, EEOC issued a proposed rule, which has not been made final, that will require all agencies to make ADR available to employees at the informal complaint stage. This rule is intended to reduce the number of workplace disputes entering into the formal employment complaint process.

USDA has used several forms of ADR, primarily in the formal stages of the employment complaint process. In 1994, the Department established dispute resolution boards to address the growing volume of employment complaints. The boards, which were discontinued in April 1997, conducted hearings on about 12 to 15 percent of all employment cases, assessed the cases, and tried to formally resolve them. A USDA evaluation found that while the boards helped settle formal complaints, they were flawed. The evaluation noted that the boards were labor-intensive, were expensive, and did not address disputes early enough or deal with the underlying issues of the complaints. Moreover, supervisors said that the boards

²⁸ADR Study, U.S. Equal Employment Opportunity Commission, Office of Federal Operations (Oct. 1996).

undermined their authority and that a "settle-at-all-costs" policy encouraged employees to file complaints.

Several USDA agencies have also used mediation to help settle formal employment complaints. From October 1997 through January 1998, the Forest Service, in conjunction with the Office of the Assistant Secretary for Administration, used outside professional mediation to address its backlog of unresolved employment complaints. About two-thirds of the backlog was resolved through settlements with complainants. However, the Forest Service's report on the initiative noted that many of the complaints could have been resolved much earlier (or may not have been filed at all) if managers had done a better job of managing conflict at the outset. During 1998, the Animal and Plant Health Inspection Service and FSA also used mediation to settle employment cases.

Recognizing that USDA needed to address workplace disputes before they escalated into formal complaints, the Secretary issued a memorandum in May 1996 directing each USDA agency or mission area to develop an ADR-based conflict resolution program outside of the formal employment complaint process by November 30, 1996.²⁹ However, as of October 1, 1998, USDA had only five ADR programs. These programs cover (1) all employees in 6 of USDA's 17 agencies, (2) employees in two regions of one agency, and (3) some employees in one Department-level office. The Assistant Secretary for Administration issued a guide to conflict resolution programs in October 1996. However, several agencies were waiting for an official USDA policy statement before they developed their own ADR programs. On December 21, 1998, the Secretary of Agriculture issued a conflict management policy. Detailed guidance to agency heads regarding implementation of the policy is expected to be issued by early February 1999.

In another effort to expand the use of conflict resolution programs, USDA established a Conflict Prevention and Resolution Center in March 1998. The center's mission is to coordinate USDA's ADR and conflict prevention efforts, thereby providing a forum for addressing workplace conflict that may or may not involve discrimination. The center, however, has not been fully funded or staffed; current staffing is limited to a director and a secretary. According to the Director, as of November 25, 1998, he had received authority to hire one conflict management specialist. In addition, up to three additional specialists may be hired, depending on funding

²⁹Conflict resolution programs are also referred to as conflict prevention or complaint prevention programs. In this report, we are using the term "conflict resolution" as a catchall term for these programs.

availability in fiscal year 1999. The Conflict Prevention and Resolution Center is responsible for leading the Department's conflict management program.

In addition to using ADR for employment complaints, some federal agencies use ADR programs to resolve disputes relating to agency programs or activities. As previously discussed, OCR's operations manual for program complaints calls for complainants to be offered mediation early in the complaint process. However, USDA officials said that mediation is not being offered as part of the new program complaint process and that it would be necessary to conduct a mediation pilot before implementing a full-scale mediation program. Although USDA officials acknowledge that mediation can potentially reduce the number of program-related complaints, little progress has been made in developing a mediation pilot program. Furthermore, the December 1998 conflict management policy does not specify the use of ADR in the program complaint process.

Conclusions

It has been almost 2 years since the report by the Civil Rights Action Team called for extensive reforms to USDA's civil rights program. While USDA has made an effort to enhance its program complaint resources, many of the problems reported by the action team still hinder efforts to improve processing timeliness: Management turnover and reorganizations continue unabated; inadequate staff expertise is still a problem; USDA's civil rights guidance and procedures remain inadequate; and poor communication between OCR and other USDA entities continues to be a roadblock to increased processing efficiency. As a result, USDA continues to exceed the EEOC time frames for processing employment complaints and to miss important interim time frames in its program complaint process. Clearly, USDA's civil rights program has a long way to go before it will achieve the Secretary's goal of making USDA the civil rights leader in the federal government.

The additional expertise brought to the program complaint process, the plans of OCR's Director to improve training for civil rights employees, and the actions under way to replace 36 OCR employees who lack adequate civil rights expertise should, if effectively implemented, help enhance staff expertise and strengthen OCR's complaint-processing capabilities. At the same time, however, USDA must make a concerted effort to address the remaining long-standing problems that have contributed to the processing delays. For example, while USDA may not be able to eliminate management turnover, the impact of this turnover can be ameliorated by having clear,

up-to-date guidance and procedures. Such guidance and procedures would promote departmentwide compliance with, and standardization and effective enforcement of, civil rights statutes and EEOC regulations.

Similarly, we believe that improved working relationships between OCR and other USDA organizations can be facilitated by implementing processes to ensure appropriate consultation at key points in the development of new policies and processes. Unless OCR officials make a conscientious effort to effectively communicate with these organizations, their roles and responsibilities will not be clearly understood and their compliance will remain problematical.

An ADR program can help reduce the number of employment complaints. This program would relieve OCR of some of the burdens imposed by its large caseload and enable it to focus on streamlining its employment complaint process to make it more timely. For this to happen, however, USDA will need to ensure that ADR is effectively implemented departmentwide as a means of informally resolving workplace disputes. In addition, ADR offers the potential for early resolution of program cases—an area in which ADR is not being used.

Finally, it is important for OCR managers and staff to keep in mind the importance of their mission. Delays in processing discrimination complaints are unacceptable not only because they result in USDA's failure to comply with federal regulations and meet internal time frames—more importantly, these delays affect the livelihood and well-being of individuals who believe they have been discriminated against.

Recommendations

To improve the timeliness of USDA's processes for resolving employment and program discrimination complaints, we recommend that the Secretary of Agriculture direct the Acting Assistant Secretary for Administration to take the following actions:

- Establish target dates and ensure that they are met for (1) issuing departmental regulations for the assisted and conducted program and employment complaints processes and (2) revising the conducted program and employment complaints operations manuals and issuing an operations manual for assisted program complaints so that the manuals accurately reflect departmental regulations. In addition, develop procedures to ensure that departmental regulations and manuals are kept up-to-date to

reflect subsequent organizational, policy, or procedural changes that can affect the implementation of USDA's civil rights program.

- Establish target dates and ensure that they are met for having the Director of OCR implement the office's plans to relocate the OCR employees identified as lacking necessary skills and fill the vacated positions with employees who have appropriate civil rights expertise. Additionally, direct the Director of OCR to assess the training needs of OCR's employees and implement a program to meet current and future training needs.
- Establish procedures for ensuring more effective consultation and communication by OCR with agency civil rights offices, OGC, and other affected entities, particularly in implementing new processes, policies, and procedures that affect these organizations.
- To facilitate the resolution of program discrimination complaints, develop and implement a program for using alternative dispute resolution early in the program complaint process.

Agency Comments

We provided a draft of this report to USDA for review and comment. In commenting on this report for USDA, the Director of the Office of Civil Rights stated that the record for processing complaints as described in our report was accurate, the management weaknesses we cited were real, and our recommended changes were necessary. In that regard, she noted that USDA was actively moving toward full adoption and implementation of our recommendations. Appendix II contains the complete text of USDA's comments.

We performed our work from December 1997 through January 1999 in accordance with generally accepted government auditing standards. Appendix I contains detailed information on our scope and methodology.

We are sending copies of this report to the appropriate congressional committees; interested Members of Congress; the Secretary of Agriculture; the Director, Office of Management and Budget; and other interested parties. We will also make copies available upon request.

If you have any questions about this report, please call me at
(202) 512-5138. Major contributors to this report are listed in appendix III.

Sincerely yours,

A handwritten signature in cursive script, reading "Lawrence J. Dyckman". The signature is written in dark ink and is positioned above the printed name.

Lawrence J. Dyckman
Director, Food and
Agriculture Issues

Contents

Letter	1
Appendix I Scope and Methodology	32
Appendix II Comments From the U.S. Department of Agriculture	34
Appendix III Major Contributors to This Report	37
Tables	
Table 1: Status of Backlog Program Cases, July 1 and October 1, 1998	9
Table 2: Stages in the Program Complaint Process and Associated Time Frames	11
Table 3: Timeliness of Agency Responses, as of October 1, 1998	12
Table 4: Time Taken by USDA to Investigate and Close Employment Complaint Cases Compared with Other Federal Agencies, Fiscal Year 1997	14
Table 5: Cases in Investigation and Final Agency Decision Stages of the Employment Complaint Process, as of October 1, 1998	15
Figures	
Figure 1: Proposed Reorganization of USDA's Office of Civil Rights	5
Figure 2: Process and Time Frames for Federal Employment Complaints	8

Contents

Abbreviations

ADR	alternative dispute resolution
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
FSA	Farm Service Agency
OCR	Office of Civil Rights
OGC	Office of General Counsel
OIG	Office of Inspector General
USDA	U.S. Department of Agriculture

Scope and Methodology

To gain an understanding of the history of and current environment for civil rights at the U.S. Department of Agriculture (USDA), we reviewed the February 1997 Civil Rights Action Team's report and two subsequent reports on the implementation of the 92 recommendations in the February report. We also met with staff from USDA's Office of Inspector General (OIG) and reviewed OIG reports that dealt with USDA's efforts to reduce the program complaints backlog and to improve the overall system for processing program complaints.

In conducting our work, we focused on USDA's Office of Civil Rights (OCR) and the three USDA agencies that have the greatest number of discrimination complaints—the Farm Service Agency (FSA) and the Rural Housing Service, which together account for about 80 percent of the program complaints, and the Forest Service, which accounts for about 21 percent of employment complaints.

To determine the timeliness of USDA's processing of program and employment complaints, we reviewed Equal Employment Opportunity Commission (EEOC) regulations, laws and regulations concerning discrimination in USDA's conducted and assisted programs, and OCR's operations manuals for processing conducted program complaints and employment complaints. Furthermore, we analyzed reports from OCR's database dealing with the timeliness of program and employment complaints. Specifically, we examined the time frames for processing backlog and new program and employment cases. Regarding employment complaints, we also obtained statistical data from EEOC to compare USDA's timeliness in processing employment cases with that of other federal agencies. We did not verify the accuracy of OCR's or EEOC's data. The OIG reported in September 1998 that OCR's database for tracking program complaints was incomplete and contained errors. However, we used the database for our analysis since it contains the only information available on USDA's processing times for program complaints.

To determine the reasons for delays in the processing of program and employment complaints, we interviewed USDA officials, including the Acting Assistant Secretary for Administration; the Special Assistant to the Secretary for Civil Rights; OCR's past and current directors and a number of managers and staff in that office; the Associate General Counsel for Civil Rights; the civil rights directors for FSA, Rural Development (which encompasses Rural Housing Service as well as several other agencies), and the Forest Service; and the Chief, Conflict Prevention and Resolution Center. We also interviewed officials at EEOC and the Federal Mediation

and Conciliation Service, the federal agency that has a leadership role in alternative dispute resolution. We also analyzed reports from OCR's database to determine where bottlenecks were occurring in processing complaints.

In addition, regarding program complaints, we (1) met with a Department of Education official to discuss the system the Department used to process program complaints (USDA officials told us that Education had streamlined its program complaint processes), (2) interviewed FSA staff in Montgomery, Alabama, who conduct the field work needed to prepare FSA's response to program discrimination complaints; and (3) interviewed Rural Development mission area staff in Alabama and Georgia, who conduct the field work needed to prepare the Rural Housing Service's response to program discrimination complaints in those states.

Regarding employment complaints, we conducted a telephone survey of eight Equal Employment Opportunity (EEO) counselors to discuss the informal employment complaint process and to gain their perspective on OCR. We randomly selected the counselors from the 23 EEO counselors in FSA, Rural Development, and the Forest Service. (USDA has 44 counselors departmentwide.) We also met with Department of Transportation staff to discuss how they achieved increased efficiencies in their system for processing employment complaints. Regarding the use of alternative dispute resolution, we interviewed the Chief of USDA's Conflict Prevention and Resolution Center and the program managers for alternative dispute resolution at several USDA agencies to discuss the benefits of this approach.

We performed our review from December 1997 through January 1999 in accordance with generally accepted government auditing standards.

Comments From the U.S. Department of Agriculture



United States
Department of
Agriculture

Office of the
Assistant Secretary
for Administration

Office of
Civil Rights
1400 Independence
Avenue SW

Washington, DC
20250

JAN 20 1999

Mr. Lawrence J. Dyckman
Director, Food and Agriculture Issues
United States General Accounting Office
Washington, D.C. 20548

Dear Mr. Dyckman:

The Department of Agriculture (USDA) has not always operated an effective program of preventing civil rights violations and handling civil rights complaints. Numerous internal and external reports have previously documented USDA's poor civil rights performance record and management. The last report by the General Accounting Office (GAO) focuses on the timeliness of processing discrimination complaints and the potential reasons for delays. The record for processing complaints reported by GAO is accurate; the cited management weaknesses are real; and the recommended changes are necessary. The GAO recommendations are similar to those reported by the Civil Rights Action Team (CRAT) and in other internal and external reviews.

USDA continues to implement needed changes in systems, procedures, and management to eliminate discrimination in all USDA programs and activities, including our program of resolving discrimination complaints.

To date, our success has been mixed. For example: Since January 1, 1997, the Office of Civil Rights has resolved 1,670 employment cases with a staff of approximately 30 persons or an average of 55.6 cases per investigator. Despite this high production rate, USDA's employment discrimination caseload is higher today than 2 years ago. The increase occurred because 1,770 new complaints were filed during the same period. Similarly, more than 1,000 program complaints have been closed since November 1997. However, even when the defined backlog of cases are resolved, there are still more than 1,100 new program complaints pending. The average of 1,300 new cases in FY 98 was more than three times the expected capacity. We believe the increase in the caseload of both employment and program complaints reflects an increasing confidence in the effectiveness and efficiency of USDA's civil rights operations.

As a result of the listening sessions, the CRAT report, major lawsuits, and media stories, the Secretary started a civil rights revolution to correct the wrongs of the past.

Mr. Lawrence J. Dyckman

2

If USDA is to become the civil rights leader envisioned by the Secretary, each agency must contribute directly and positively to complaint resolution and management.

Accountability, through rating the civil rights performance of agency heads by the Assistant Secretary for Administration, remains the most recognizable program to support the Secretary's civil rights efforts. While there continues to be some notable resistance to change, we, nonetheless, are making inroads toward an environment more conducive to the fulfillment of the Department's civil rights responsibilities.

As previously acknowledged, the facts and statistics in the GAO report are generally accurate. There are minor discrepancies where time lines and procedures about employment complaints are not accurately stated. However, we concur with and accept the GAO recommendations and are actively moving toward full adoption and implementation.

- In November 1998, USDA published in the Federal Register a proposed rule to revise the regulations governing nondiscrimination in USDA assisted and conducted programs and activities. The rule was open for public comment until December 10, 1998. USDA will publish a final rule after reviewing all public comments and incorporating changes as appropriate. USDA is currently revising the Departmental Regulation that documents the processing of complaints of discrimination. The corresponding manuals will be revised in conjunction with the regulations.
- By February 1, 1999, USDA will establish realistic target dates for the relocation of employees identified as lacking necessary skills to process civil rights complaints, and employees who have appropriate civil rights expertise will be selected. The assessment of staff training needs will be completed and the implementation of a comprehensive training program will be underway by April 1, 1999.
- USDA will establish procedures by July 1, 1999, for ensuring more effective consultation and communication with agency civil rights offices, the Office of the General Counsel, and other affected entities, particularly in implementing new processes, policies and procedures that affect these organizations.
- The Secretary issued the Conflict Management Policy on December 21, 1998. The Secretary also issued a Memorandum to Subcabinet Officials concerning alternative dispute resolution (ADR) and USDA's participation in the President's Interagency ADR Working Group. That Memorandum will serve as the basis for greater use of ADR through USDA in many areas, including the processing of

Appendix II
Comments From the U.S. Department of
Agriculture

Mr. Lawrence J. Dyckman

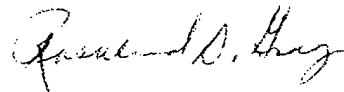
3

civil rights complaints. Agencies will be held accountable for implementing the policy through effective performance standards to be established for agency heads in FY 2000.

Although we are making progress as noted, there continues to be a fundamental question regarding the level of resources required to provide an effective civil rights program in USDA. It is encouraging that Congress has recognized the Department's needs in this area and has provided funding as requested in the President's budget over the last 2 years. However, the situation continues to change with new legislative requirements, such as the recent statute of limitations waiver, and an increase in new complaints (both program and employment). Recognizing that we have limited staff to deal with the changing circumstances, resources continue to be an issue to which all concerned parties eventually must give serious attention.

The Secretary is committed to resolving these issues and making USDA the model agency for CR activities in the Federal Government.

Sincerely,



Rosalind D. Gray
Director
Office of Civil Rights

Major Contributors to This Report

Resources, Community, and Economic Development Division

Jerilynn B. Hoy, Assistant Director
Rosellen McCarthy, Evaluator-in-Charge
Roberto R. Pinero
Brian Frasier

General Government Division

Anthony P. Lofaro

Office of the General Counsel

Susan Poling, Associate General Counsel
Alan R. Kasdan, Assistant General Counsel
Oliver H. Easterwood, Senior Attorney